

Interagency Agreement for Independent Legal Services Provided to the Central Valley Flood Protection Board

This Interagency Agreement is a contract between the Central Valley Flood Protection Board (Board) and the Department of Justice, Office of the Attorney General, to provide independent legal services to the Board for fiscal year 08/09.

- I. Ramifications of flood legislation signed in October of 2007 and which took effect January 1, 2008:
 - A. The new legislation language provides that the Board "may employ legal counsel." The Attorney General's Office agreed to "lend" the Board the services of two of their attorneys - Virginia Cahill as the primary attorney, with assistance from Deborah Smith. Virginia was chosen because she is well versed and experienced in California's water issues. This arrangement has worked out well for the Board and Board staff.
 - B. As of July 1, 2008, the beginning of the new fiscal year, the Board intends to have permanent arrangements for independent legal counsel in place. The Attorney General's Office is willing to continue to work with the Board and staff under an Interagency Agreement.
 - C. Based on our request, \$200,000 has been set aside in the Governor's Budget for these services (see scope of work, cost breakdown, and terms of the Agreement attached).
 - D. The Agreement is in the process of being finalized for routing through the Department of Water Resources' Budget Analyst and Contracts Office for funding approval.
- II. Recommendation:

Consider approval of delegation of authority to the Executive Officer to execute an Interagency Agreement between the Central Valley Flood Protection Board and the Department of Justice for the Office of Attorney General to provide independent legal services to the Board.

SCOPE OF WORK

A. Introduction

The Department of Justice (DOJ) will provide legal and investigative services for the Central Valley Flood Protection Board. Services of the DOJ shall be available at the request of the Executive Officer of Central Valley Flood Protection Board.

B. Background

DOJ has been providing legal services since January 1, 2008. The need for DOJ services continues to exist and the Board requires DOJ's legal services to assist with client advice and to defend legal challenges.

C. Scope

DOJ will provide legal and investigative services for the Central Valley Flood Protection Board. Services of the DOJ will be available at the request of the Executive Officer of Central Valley Flood Protection Board.

1. Legal advice, document review, and document drafting related to program compliance with State and federal open meeting acts, information acts, conflict of interest laws, ex parte communications, and delegations of authority.
2. Legal advice related to implementation of programs mandated by the Central Valley Flood Protection Board. Issues include, but are not limited to, review of environmental documents and other activities requiring compliance with State laws and procedures.
3. Legal advice related to the Central Valley Flood Protection Board meetings, including, but not limited, to, compliance with conflict of interest and ex parte communications, review of agenda meeting notices and items with legal implications of proposed policy, and legal representation at meetings to advise on legal procedures, open meeting law, and closed sessions.
4. Legal advice related to the development and adoption of regulations, including requirements of the Administrative Procedure Act and procedures of the Office of Administrative Law.
5. Legal advice related to interpretation of the Central Valley Flood Protection Board legislation, review and analyze legislative bills and assist in drafting legislation to assure legal sufficiency in furthering the Central Valley Flood Protection Board policy objectives.

6. Representation of Central Valley Flood Protection Board in ongoing and new litigation.

D. Place of Performance

The tasks identified in this contract will be primarily performed in Sacramento.

E. Communication

The Board's coordinator for this agreement shall be Lorraine Pendlebury (916) 574-0609. The Board's coordinator may be changed by written notice to DOJ.

Central Valley Flood Protection Board Contract Manager

Jay S. Punia, Executive Officer
Central Valley Flood Protection Board
3310 El Camino Avenue, Room LL40
Sacramento, California 95821
Tel: (916) 574-0609

Upon advanced written notice to DOJ, the Contract Manager may be changed at any time.

Department of Justice Contract Manager

Virginia Cahill, Deputy Attorney General
California Attorney General's Office
1300 I Street
Sacramento, California 95814
Tel: (916) 322-5647

Upon advanced written notice to Central Valley Flood Protection Board, the Contract Manager may be changed at any time.

COST BREAKDOWN

BUDGET ESTIMATE

Attorney Services:

Hourly:	\$158.00	Attorney services as described in Exhibit A, Scope of Work
Hours per year:	<u>x 1107</u>	= \$174, 906.00

Miscellaneous Services:

Hourly:	\$158.00	Copying, court calls, travel per diem
Hours per year:	<u>x 158</u>	= \$24,964.00

Contract total:	\$199,870.00
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EXHIBIT B
BUDGET DETAIL AND PAYMENT PROVISIONS

INVOICING AND PAYMENT: Contractor shall submit three (3) copies of the invoice to the State only after receiving verbal notice of satisfactory completion or acceptance of work by the Contract Manager. **The State will not accept an invoice for which work has not been approved and will return the invoice as a disputed invoice to the Contractor.**

Invoices shall be submitted no more often than monthly, in arrears, bearing the contract number.

Submit two (2) copies of each invoice to the Contract Manager at the following address:

Jay S. Punia
Central Valley Flood Protection Board
3310 El Camino Ave., Room LL40
Sacramento, California 95821

Undisputed invoices shall be approved for payment within 45 days of the date received by the Contract Manager and /or the Accounting Office, whichever date occurs later.

Budget Contingency Clause: It is mutually agreed that if the Budget Act of the current year and/or any subsequent years covered under this Agreement does not appropriate sufficient funds for the program, this Agreement shall be of no further force and effect. In this event, the State shall have no liability to pay any funds whatsoever to Contractor or to furnish any other considerations under this Agreement and Contractor shall not be obligated to perform any provisions of this Agreement.

If funding for any fiscal year is reduced or deleted by the Budget Act for purposes of this program, the State shall have the option to either: cancel this Agreement with no liability occurring to the State, or offer an Agreement Amendment to Contractor to reflect the reduced amount.

EXHIBIT C

GENERAL TERMS AND CONDITIONS

AMENDMENTS

By mutual agreement, the parties may amend this Agreement in writing. DOJ shall submit a written request for amendment. The amendment is not effective until Central Valley Flood Protection Board provides written approval of the amendment, its terms, and conditions. Work completed prior to approval of an amendment is done at DOJ's risk, without expectation of reimbursement.

No alteration or variation of this agreement shall be valid unless made in writing and signed by the parties hereto, and no oral understanding or agreement not incorporated herein shall be binding on any of the parties hereto.

DISPUTES

If a dispute regarding this Agreement arises, the project manager shall submit a written dispute statement to Central Valley Flood Protection Board for resolution. These statements shall contain a concise statement of the substance of the dispute, along with any supporting documentation including, but not limited to, invoices, time sheets, or photographs. The decision of the Executive Officer shall constitute the final administrative forum for resolution of disputes.

STANDARD CONTRACTING REQUIREMENTS

Independent Status: DOJ, and the officers, agents and employees of DOJ, in the performance of the agreement, shall act in an independent capacity and not as officers, employees or agents of Central Valley Flood Protection Board.

Assignment: Without the written consent of Central Valley Flood Protection Board, this agreement is not assignable by DOJ in whole or in part.